

TENTATIVE RULINGS for CIVIL LAW and MOTION

May 6, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: County Fair Fashion Mall, LLC v. Fireman's Fund Ins. Co.
Case No. CV CV 09-80

Hearing Date: May 6, 2009 Department Fifteen 9:00 a.m.

This motion is **CONTINUED** on the Court's own motion to Wednesday, May 20, 2009, at 9:00 a.m. in Department Fifteen.

TENTATIVE RULING

Case: Hayden v. Shestowsky
Case No. CV CV 08-3382

Hearing Date: May 6, 2009 Department Fifteen 9:00 a.m.

Mark Hayden's demurrer to the third cause of action of the cross-complaint: The demurrer is **OVERRULED**. The cross-complainant alleges that the cross-defendant deliberately refused to pay property expenses, to the cross-complainant's detriment and risking the parties' joint interest in the subject property in order to coerce the cross-complainant to concede to the cross-defendant's demands. Additionally, it is alleged that the cross-defendant is falsely claiming a greater than 50% share in the subject property, which claim is adverse to the cross-complainant's interest in said property.

Mark Hayden's motion to strike portions of the cross-complaint: The motion to strike the allegation concerning a promise to become engaged, in paragraph 12 of the cross-complaint, is **DENIED**. The allegation regarding the parties' personal relationship is relevant to whether a fiduciary relationship existed between the parties and the duties the cross-defendant owed to the cross-complainant.

The motion to strike the second sentence of paragraph 21 of the cross-complaint is **DENIED**. The allegations in the second sentence of paragraph 21 are relevant to the alleged bad faith by the cross-defendant.

The motion to strike paragraph 24 of the cross-complaint is **GRANTED**. The cross-complainant does not cite any contract provision or statute that authorizes an award of

attorney's fees for her cause of action for breach of the implied covenant. The cases cited in the opposition brief do not establish her claim for attorney's fees.

The motion to strike paragraph 29 of the cross-complaint is **DENIED**. Punitive damages are available in a cause of action for breach of fiduciary duty. (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1582.) The cross-complainant alleges that the cross-defendant breached his fiduciary obligations.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: County Fair Fashion Mall v. Creative Tile, Inc.
Case No. CV CV 07-2754

Hearing Date: May 6, 2009 Department Fifteen 9:00 a.m.

Creative Tile, Inc.'s unopposed motion to have the matters stated in its Request for Admissions, Set No. One to County Fair Fashion Mall, LLC deemed admitted is **DENIED**. Before the hearing on the defendant's motion, County Fair Fashion Mall, LLC served a response that substantially complies with Code of Civil Procedure section 2033.220. (Code Civ. Proc., § 2033.280, subd. (c).)

Creative Tile, Inc.'s unopposed motions to compel responses to form and special interrogatories and demand for production of documents, sets no. one to County Fair Fashion Mall, LLC are **GRANTED**. (Code Civ. Proc., §§ 2030.290, subd. (b) and 2031.300, subd. (b).)

Creative Tile, Inc.'s unopposed requests for monetary sanctions are **GRANTED** in the total amount of \$907.50. (Code Civ. Proc., § 2033.280, subd. (c); Cal. Rules of Court, rule 3.1030.)

Creative Tile, Inc. shall serve counsel for the plaintiff with a copy of this order by no later than May 8, 2009. County Fair Fashion Mall, LLC shall serve verified answers to the above interrogatories and demands for production of documents, without objections, **by no later than May 22, 2009**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: State of California v. Martinez
Case No. CV PT 09-906

Hearing Date: May 6, 2009 Department Fifteen 9:00 a.m.

The People are required to appear to state whether they oppose or support the petition.